

*Del'd to the King*  
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*An Answer to a LETTER Written by a Member of  
Parliament in the Countrey, upon the occasion of his  
reading of the Gazette of the 11th of Decem-  
ber, 1679.*

S I R,

**I** Received your Letter, when I was engaged in much other business, which will excuse me that I have not returned an Answer sooner, and that it is done no better now: You desire me to let you know what that Judgment is which my Lord Chancellor acquainted my Lord Mayor and his Brethren with, and what my thoughts are upon it: and that I may obey you in both, I will first Transcribe that Case, as it is reported by Justice Crook, that being already put into English, whereas the Case in *Moor* is in French.

**M**emorandum, That by Command from the King, all the Justices of England, with divers of the Nobility, viz. the Lord Ellesmere Lord Chancellor, the Earl of Dorset Lord Treasurer, Viscount Cranbourn Principal Secretary, the Earl of Nottingham Lord Admiral, the Earls of Northumberland, Worcester, Devon and Northampton, the Lords Zouch, Burghley and Knowles, the Chancellor of the Dutchy, the Archbishop of Canterbury, the Bishop of London, Popham Chief Justice, Bruce Master of the Rolls, Anderson, Gawdy, Walmsley, Fenner, Kingmil, Warburton, Savel, Daniel, Tolverton and Snigg, were assembled in the Star-Chamber, where the Lord Chancellor, after a long Speech made by him concerning Justices of the Peace, and his Exhortation to the Justices of Assize, and a discourse concerning Papists and Puritans, Declaring how they both were disturbers of the State, and that the King intending to suppress them, and to have the Laws put in execution against them; demanded of the Justices their Resolutions in three things: First, Whether the Deprivation of Puritan-Ministers by the High Commissioners, for refusing to conform themselves to the Ceremonies appointed by the last Canons, was Lawful? Whereunto all the Justices answered, That they had conferred thereof before, and held it to be Lawful, because the King hath the Supreme Ecclesiastical power, which he hath delegated to the Commissioners, whereby they had the power of Deprivation by the Canon-Law of the Realm. And the Statute of 1 Eliz. which appoints Commissioners to be made by the Queen, doth not confer any new power, but explain and declare the ancient Power. And therefore they held it clear, That the King without Parliament might make Orders and Constitutions for the Government of the Clergy, and might deprive them if they obeyed not. And so the Commissioners might deprive them. But they could not make any Constitutions without the King: And the divulging of such Ordinances by Proclamation is a most gracious Admonition; And for as much as they have refused to obey, they are Lawfully deprived by the Commissioners *ex Officio*, without Libel *Et ore tenus convocati*. Secondly, Whether a Prohibition be grantable against the Commissioners upon the Statute of 2 H. 5. if they do not deliver the Copy of the Libel to the Party; Whereunto they all answered, That that Statute is intended where the Ecclesiastical Judge proceeds *ex Officio & ore tenus*. Thirdly, Whether it were an offence punishable, and what punishment they deserved, who framed Petitions, and collected a multitude of hands thereto, to prefer to the King in a publick cause, as the Puritans had done, with an Intimation to the King, That if he denied their Sute, many thousands of his Subjects would be discontented? Whereunto all the Justices answered, That it was an offence finable at discretion, and very near to *Treason and Felony in the punishment*: For they tended to the raising of Sedition, Rebellion, and Discontent among the People: To which Resolution all the Lords agreed. And then many of the Lords declared, That some of the Puritans had raised a false Rumor of the King, how he intended to grant a toleration to Papists: Which offence the Justices conceived to be heinously finable by the Rules of the Common Law, either in the Kings Bench, or by the King and his Council; or now since the Statute of 3 H. 7. in the Star-Chamber. And the Lords severally declared how the King was discontented with the said false Rumor, and had made but the day before a protestation unto them,

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them, that he never intended it, and that he would spend the last drop of Blood in his body before he would do it; and prayed, that before any of his Issue should maintain any other Religion than what he truly professed and maintained, that God would take them out of the world.

I doubt not but your self, and every *English* Protestant, will joyn with this Royal Petitioner, and will heartily say *Amen*.

But you desire to know if I think the Resolution of the Judges in this case ought to deter us from humbly Petitioning his Majesty, that this Parliament may effectually sit on the 28th. day of *January* next. In order to this, give me leave to observe to you, As it is most certain, that a great Reverence is due to the Unanimous opinion of all the Judges, so there is a great difference to be put between the Authority of their Judgments when solemnly given, in cases depending before them, and their sudden and extrajudicial opinions. The Case of Ship-money it self, is not a better proof of this, than that which you have now read, as you will now see, if you consider distinctly what they say to the several Questions proposed to them.

As to their answer to the first question, it much concerns the Reverend Clergy to enquire whether they did not mistake in it? And whether the King by his Proclamation, can make new constitutions, and oblige them to obedience under the penalty of deprivation? Should it be so, and should this unhappy Kingdom ever suffer under the Reign of a Popish Prince, he might easily rid himself of such obstinate Hereticks, and leave his Ecclesiastical Preferments open for men of better Principles: He will need only to publish a Proclamation, that Spittle and Salt should be used in Baptism, that Holy water should be used, and Images set up in Churches; and a few more such things as these, and the business were effectually done. But if you will believe my Lord Chief Justice Cook, he will tell you that it was agreed by all the Judges upon Debate, *Hill. 4to. Jacobi*, that the King cannot change his Ecclesiastical Law; and you may easily remember since the whole Parliament declared, that he could not alter or suspend them.

12. Co. 19.

12. Co. 49.

Co. Mag. Char.  
516.

I have the uniform Opinion of all the Judges given upon great deliberation, *Mich. 4to. Jac.* to justify me, if I say that our Judges here were utterly mistaken in the Answer which they gave to the second question, I will not cite the numerous subsequent Authorities, since every man knows that it is the constant practice of *Westminster-Hall* at this day to grant Prohibitions, upon refusal to give a Copy of Articles, where the Proceedings in the Ecclesiastical Courts are *ex Officio*.

You see there was a kind of ill Fate upon the Judges this day, as usually there was when met in the Star-chamber, and that they were very unfortunate in answering two of the three Questions proposed to them; let us go on to consider what does principally concern us at present, their Answer to the last Question.

You have just done reading it, and therefore I need not repeat to you either the Doubt or the Solution of it; but one may be allowed to say modestly, that it was a sudden Answer: 'Tis possible the Lords then present were well enough inform'd, when they were told that such kind of Petitioning was an offence next to Treason and Felony; but I dare be so bold as to say, That at this day, not a Lawyer in *England* would be the wiser for such an Answer; they would be confounded, and not know whether it were misprision of Treason, which seems an offence nearest to Treason, or Petty-larceny, which seems nearest to Felony.

You will be apt to tell me that I mistake my Lords the Judges, and they spoke not of the nature of the crime, but the manner of the punishment; but this will mend the matter but little; for since the punishments of those two Crimes are so very different, you are still as much in the dark as ever, what these ambiguous words mean.

Well, but we will agree, that the Crime about which the enquiry was made, was a very great one. When men arrive to such Insolence, as to threaten their Prince, it will be but little excuse to them to call their *Menaces*; by the soft & gentle name of *Petitions*.

But you would know for what, and in what manner we are at present to Petition; and I will give you a plain and infallible Rule. It is the Statute 13. *Car. 2. c. 5*.

Be it enacted, &c. that no person or persons whatsoever, shall sollicite, labour, or procure the getting of hands, or other consent of any persons above the number of twenty, or more, to any Petition, Complaint, Remonstrance, Declaration, or other Addresses to the King, or both, or either Houses of Parliament, for alteration of matters established by Law in Church or State, unless the matter thereof have been first consented to, and ordered by three or more Justices of the County, or by the major part of the Grand Jury of the County, or Division of the County, where the same matter shall arise at their publick Assizes, or General Quarter-Sessions, or if arising in *London*, by the Lord Mayor, Aldermen, and Commons in Common Council assembled; and that no person or persons what-



whatsoever shall repair to His Majesty, or both, or either of the Houses of Parliament, upon Pretence of presenting or delivering any Petition, Complaint, Remonstrance, or Declaration, or other Addresses; accompanied with excessive number of People, not at any one time with above the number of ten Persons, upon the pain of incurring a Penalty, not exceeding the Sum of 100 *l.* in Money, and three Months Imprisonment, without Bail or Mainprize for every Offence; which Offence to be prosecuted at the Court of *Kings-bench*, or at the Assizes, or general Quarter-Sessions, within six Months after the Offence committed, and proved by two or more credible Witnesses.

Here you observe the Parliament, who set themselves directly to obviate all the Inconveniences which might arise to the Government from tumultuous petitioning, will not allow that great Numbers should joyn in Petitions, for alteration of the Laws (because it is possible ill men might abuse such a Liberty,) unless the matter of the Petition be consented to in such a manner as the Act directs; but in all other Cases, they leave the Subjects to their undoubted Liberty, as well knowing that from thence there could arise no possible Inconvenience; but on the contrary, that to bar the people of that humble way of making their Wants known, might force them upon worse ways of doing it.

And therefore I must tell you, that you do my Lord Chancellor great Injustice if you think his Speech tends to deter men from all manner of petitioning: No, that wise and eloquent Lord, who receives every day so many Petitions, will, I suppose, be content the King should receive some too. It never yet was thought seditious or tumultuous in any Government, for the Subjects in an humble manner to beg, That he who has the only Power to do it, would redress their Grievances: 'Tis the way by which we apply ourselves to the King of Heaven, who knows all our Wants, and yet expects from us that we should daily express them to him in humble Petitions. And the Wisdom of the Church, which has appointed Liturgies, and Forms of Common-prayer, seems to instruct us, that God is pleased when huge Numbers joyn in the same Petition. Why should not then suppliant Subjects, with like Humility, and in like manner address themselves to the God on Earth? especially since Kings cannot know our Desires, or our Grievances, till we ourselves inform them what they are. I remember some wicked Councillors of *Darius* did once obtain a Law to be made, that none should petition any one but the King for thirty days; but there never yet was found so absurd a States-man as to advise a Law, that Subjects should not supplicate their Prince. 'Tis probable it would be well for some Favourites, who are near a King, if such a Right could be taken from the People, for then all their false Suggestions and Informations might pass undiscovered; but 'tis impossible that a King should long be safe in such a Condition. I will suppose a malicious Statesman, intending to raise a Jealousie in the mind of the Sovereign, should inform him in dangerous times, that he was not beloved by his People, and that he was not to trust them: How could the Subjects in such a case recover the Prince's good Opinion, in the Absence of a Legal Representative, but by humble and affectionate Addresses? Or suppose some good Protestant Prince should be so unfortunate, as to have some Counsellors near him who are conceal'd; and others, whose Crimes make them fear Parliaments; it is easie to suppose, that the one sort will be filling his Ears with Stories, that a great part of his Kingdom are inclined to Popery; and the other sort, that the best of his Subjects are quite out of Love with Parliaments, as factious and seditious Assemblies. Into what unfortunate Circumstances, would such a Prince be apt to fall, if his People were percluded from addressing themselves, and opening their Desires to him!

I might go on to trouble you with infinite Instances of this Nature, but there is no want of any in so plain a case: 'Tis the Doctrine of our Church, that the only Arms of Subjects, are Prayers, Petitions, Supplications and Tears; and they are no Friends either to the King or Church, who would disarm us of these. My Lord Chief Justice *Hobart* tells us, That it is lawful for any Subject to petition to the King for Redress in an humble and modest manner; for (says he) Access to the Sovereign must not be shut up in case of the Subjects Distresses. It was one of the Crimes for which the *Spencers* were banished by Parliament, that they hindred the King from receiving and answering Petitions from great men, and others.

And as it is our unquestionable Right, so in all Ages the Usage has been by Petition, to inform our King of our Grievances. In the Reign of King *Ed. 2.* and *Ed. 3.* Petitions were frequent for Redress of publick Grievances, and for Parliaments, especially out of *Ireland* (though that is a conquer'd Nation,) as may be seen in the close Rolls of the Reigns of those two Kings. One Instance I will give you for your Satisfaction; but I will tire you with no more, for that would be endless.

'Tis *Claus. 10. Ed. 2. M. 28. intus pro communitate Hibernie. Rex Dilect. & fidelibus suis Justa Cancellar. & Thesaur. suis Hib. salutem ex parti populi nostri terre predict.*

*Claus. 10. E. 2. M. 28. intus Pro communitate Hibernie.*

*Dan. ch. 6.*

*Hob. 220. Freeman's Case.*

*Vet. Magn. Chart. Exil. Hug. 61. De Spencer. 51.*



*per Petitionem suam coram nobis & Concilio nostro exhibitum nobis est cum instantia supplicatum, quod cum, &c.*

Cokes Jurisdiction of Courts

p. 79.  
Burarts History of the Reformation,

pag. 231.  
Procl. Dat. 7.  
Feb. 11. Jac.

In the 5<sup>th</sup>. year of King Richard the II. the whole Body of the Realm petition'd, that the most wise and able men within the Realm might be chosen Chancellors.

King Henry the 8. told his Subjects then in Arms against him in *York-shire*, that they ought not to have Rebell'd, but to have applied themselves to him by Petition.

King James by a Proclamation publiht in the 12<sup>th</sup>. year of his Reign, begins thus: The complaints lately exhibited to us by certain Noblemen, & others of our Kingdom of *Ireland*, suggesting disorders and abuses, as well in the proceedings of the late begun-Parliament, as in the Martial and Civil Government of the Kingdom, We did receive with extraordinary grace and favour.

Procl. 12 Jac.

And by another Proclamation in the 12<sup>th</sup>. year of his Reign, he declares, That it was the right of his Subjects to make their immediate Addresses to him by Petition; and in the 19<sup>th</sup>. year of his Reign he invites his Subjects to it.

Procl dat.  
10<sup>th</sup> July 19.  
Jac.  
Procl. dat.  
14 Feb. 20.  
Jac.

And in the 20<sup>th</sup>. year of his Reign he tells his people, that his own, and the Ears of his Privy-Council did still continue open to the just complaints of his people; and that they were not confined to times and meetings in Parliament, nor retained to particular Grievances; not doubting but that his loving subjects would apply themselves to his Majesty for relief; to the utter abolishing of all those private whisperings and causless rumours, which without giving his Majesty any opportunity of reformation by particular knowledg of any fault, serve to no other purpose but to occasion and blow abroad discontentment.

Lords Journal,  
An. 1640.

It appears, that the House of Lords both Spiritual and Temporal, *nemine contradicente*, voted thanks to those Lords who petitioned the King at *York*, to call a Parliament.

Declar. 1640.

And the King by his Declaration printed in the same year, declares his Royal Will and Pleasure, That all his loving Subjects who have any just cause to present or complain of any Grievances or Oppressions, may freely address themselves by their humble Petitions to his Sacred Majesty, who will graciously hear their complaints.

Temp. Car. 21

Since His Majesty's happy Restauration, the Inhabitants of the County of *Bucks* made a Petition, That their County might not be over-run by the Kings Deer; and the same was done by the County of *Surry* on the same occasion.

'Tis time for me to conclude your trouble: I suppose you do no longer doubt but that you may joyn in Petition for a Parliament, since you see it has been often done heretofore: nor need you fear how many of your honest Countreymen joyn with you, since you hear of Petitions by the whole Body of the Realm; and since you see, both by the opinions of our Lawyers, by the Doctrine of our Church, and by the Declarations of our Kings, That it is our undoubted right to petition. Nothing can be more absurd than to say, That the number of the Supplicants makes an innocent Petition an Offence; on the contrary, if in a thing of this Publick concernment, a few only should address themselves to the King, it would be a thing in its self ridiculous; the great end of such Addresses being to acquaint Him with the general desires of His People, which can never be done unless multitudes joyn. How can the complaints of the diffusive Body of the Realm reach his Majesty's ears in the absence of Parliament, but in the actual concurrence of every individual Person in Petition? for the personal Application of multitudes, is indeed unlawful and dangerous.

Stat. 13. Car.  
2. c. 5.

Give me leave, since the *Gazette* runs so much in your mind, to tell you (as I may modestly enough do, since the Statute directs me) what Answer the Judges would now give if such another Case were put to them, as was put to the Judges 2 *Jacobi*.

Suppose the Nonconformists at this day (as the *Puritans* then did) should sollicite the getting of the hands of Multitudes to a Petition to the King for suspending the Execution of the penal Laws against themselves; the present Judges would not tell you that this was an Offence next to Treason or Felony, nor that the Offenders were to be brought to the Council-board to be punished; but they would tell you plainly and distinctly, That if the hands of more persons than twenty were solicited or procured to such a Petition, and the Offenders were convicted upon the Evidence of two or more credible Witnesses upon a Prosecution in the Kings-bench, or at the Assizes or Quarter Sessions, within six Months, they would incur a Penalty not exceeding a 100 *l*. and three Months Imprisonment, because their Petition was to change a matter establish'd by Law. But I am sure you are a better Logician than not to see the Difference which the Statute makes between such a Petition which is to altar a thing establish'd by Law, and an innocent and humble Petition: That a Parliament may meet according to Law, in a time when the greatest Dangers hang over the King, the Church, and the State.

FINIS.